

FEDERAL CIRCUIT COURT OF AUSTRALIA

*RANI & ANOR v MINISTER FOR
IMMIGRATION & ANOR*

[2015] FCCA 455

Catchwords:

MIGRATION – Review of Migration Review Tribunal decision – refusal of a skilled residence visa – applicant found to have relied upon a “bogus document” to satisfy English language criterion – no jurisdictional error.

Legislation:

Migration Act 1958 (Cth), ss.57, 65, 97, 359A, 359AA, 476

Cases cited:

Abebe v Commonwealth (1999) 197 CLR 510
Australian Heritage Commission v Mount Isa Mines Ltd (1997) 187 CLR 297
Australian Postal Corporation v D’Rozario (2014) 222 FCR 303
George v Rockett (1990) 170 CLR 104
Minister for Immigration v Brar (2012) 201 FCR 240
Minister for Immigration v SZIAI (2009) 259 ALR 429
Minister for Immigration v SZMDS (2010) 240 CLR 611
SZOOR v Minister for Immigration (2012) 202 FCR 1
Trivedi v Minister for Immigration (2014) 220 FCR 169
Waterford v Commonwealth (1987) 163 CLR 54

First Applicant:	BALJIT RANI
Second Applicant:	SATINDER SINGH
First Respondent:	MINISTER FOR IMMIGRATION & BORDER PROTECTION
Second Respondent:	MIGRATION REVIEW TRIBUNAL
File Number:	SYG 382 of 2014
Judgment of:	Judge Driver
Hearing date:	2 March 2015
Delivered at:	Sydney

Delivered on:

2 March 2015

REPRESENTATION

Solicitors for the Applicant: Dr N Daawar of Ariana Defence Lawyers

Counsel for the Respondents: Mr T Reilly

Solicitors for the Respondents: DLA Piper

ORDERS

- (1) The application as amended on 19 December 2014 is dismissed.
- (2) The applicants are to pay the first respondent's costs and disbursements of and incidental to the application, including costs thrown away, fixed in the amount of \$8,700.

(i)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT SYDNEY

SYG 382 of 2014

BALJIT RANI

First Applicant

SATINDER SINGH

Second Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION

First Respondent

MIGRATION REVIEW TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

Introduction and background

1. On 2 March 2015 I dismissed the application for judicial review in this matter with costs. The following are my reasons for those orders.
2. The applicant, Ms Rani, challenges a decision of the Migration Review Tribunal (Tribunal) made on 22 January 2014. The Tribunal affirmed a decision of a delegate of the Minister not to grant her and her partner skilled residence visas. Ms Rani was the principal applicant and

references in this judgment to “the applicant” are intended to be references to her.

3. Ms Rani is a citizen of India. She applied for the visa on 14 October 2011¹. On 11 June 2013 the Minister’s delegate wrote to Ms Rani pursuant to s.57 of the *Migration Act 1958* (Cth) (Migration Act)². The delegate noted information that Ms Rani’s International English Language Testing System (IELTS) test result dated 8 September 2011 submitted by her in support of her visa application³ was not genuine. The delegate refused the visa on 9 July 2013, finding that Ms Rani had submitted a “bogus document” as defined in s.97 of the Migration Act or information that was false or misleading in a material particular in support of her visa application, so Public Interest Criterion (PIC) 4020(1) applied, and Ms Rani did not satisfy clause 885.224⁴.
4. Ms Rani applied to the Tribunal for review on 23 July 2013⁵. The Tribunal held a hearing on 8 November 2013⁶.
5. The Tribunal put information to Ms Rani at the hearing, pursuant to s.359AA of the Migration Act, that the IELTS test⁷ was undertaken by a person whose photo did not match Ms Rani, and that the scores in it had been cancelled and recorded at zero⁸. The Tribunal considered Ms Rani’s response, including an alleged email from the British Council in Delhi⁹. The Tribunal noted concerns with this document, and gave it no weight¹⁰. The Tribunal also rejected claims by Ms Rani’s migration agent that Indian applicants obtain better IELTS results in India, or that there is “bungling” in IELTS¹¹. The Tribunal concluded that the IELTS report form submitted by Ms Rani was for a test that had been undertaken by a different person, and had been altered by Ms Rani¹². Ms Rani had therefore submitted a “bogus document” as defined in s.97 of the Migration Act in support of her visa application, so PIC

¹ Court Book (CB) 1-103

² CB 132-136

³ CB 86

⁴ CB 165-176

⁵ CB 181-206

⁶ CB 217-219

⁷ see CB 86

⁸ CB 240-241 [14]

⁹ CB 221

¹⁰ CB 2441 [17]-[19]

¹¹ CB 242 [23]-[25]

¹² CB 243 [27]-[28]

4020(1) applied¹³. The Tribunal declined to waive the requirements of PIC 4020(1) pursuant to PIC 4020(4)¹⁴. The Tribunal therefore concluded, like the delegate, that Ms Rani did not satisfy clause 885.224, so the visa had to be refused¹⁵.

The judicial review application

6. The application before the Court was amended several times. Ms Rani ultimately relied upon a further amended application filed on 19 December 2014 after she had obtained legal representation. There are two grounds in that application:

1. *Breach of Procedural Fairness – No Evidence Rule*

The First and Second Respondent had breached procedural fairness in particular the “No Evidence Rule” as did not act fairly in reaching to the unreasonable decision of refusing to accept the IELTS Certificate provided by the [Applicant] and concluded it is bogus document and the [Applicant] accordingly misled the Department, in the absence of logically probative contrary evidence as required by Procedural Fairness.

2. *Jurisdictional Error*

The First and Second Respondent made a jurisdictional error in applying the test of bogus document “the Minister reasonably suspects” to conclude that the document “the IELTS Certificate” provided by the [Applicant], is bogus and consequently the [Applicant] misled the Department.

7. The application as amended contains extensive particulars which are more in the nature of submissions.
8. I had before me as evidence the court book filed on 28 March 2014. I declined to receive an affidavit made by Ms Rani on 1 July 2014 (filed the following day) on the basis of a lack of relevance.
9. Ms Rani and the Minister both made oral as well as written submissions.

¹³ CB 243 [29]-[31]

¹⁴ CB 243-244 [32]-[35]

¹⁵ CB 224 [36]; see s.65(1)(b) of the Migration Act

Consideration

10. Despite the efforts of Ms Rani's representative to find fault (whether legal or otherwise) in the decision of the Tribunal, I was not persuaded that any jurisdictional error was demonstrated. To the extent that Ms Rani alleges jurisdictional error by the Minister, the Court has no jurisdiction.¹⁶
11. The first ground alleges that there was "no evidence" for the Tribunal's conclusions, or a breach of procedural fairness. To the extent that this ground alleges that there was no evidence at all for the Tribunal's conclusion that the document at CB 86 was a "bogus document", there was such evidence, being both that in the delegate's decision noted by the Tribunal at [10]¹⁷ and the evidence it obtained and put to Ms Rani at [14]-[15]¹⁸. It is well established that the no evidence principle does not apply where there is *some* evidence for the conclusion complained of¹⁹.
12. The particulars and submissions in support also assert that the Tribunal's decision was unreasonable. However as reasonable minds could differ about the Tribunal's decision it cannot be said to be illogical or irrational²⁰.
13. Ms Rani's submissions assert that the Tribunal "made decisions on speculations that the many bogus IELTS certificates were presented to the Department by Indians", but her representative was unable to identify any part of the decision that says this.
14. Ms Rani's written submissions also suggest that the Tribunal should have made further inquiries, without indicating what those inquiries should be. There can be no duty to inquire within²¹ in the absence of identification of an obvious and easily made inquiry about a critical fact. In any case, no duty can arise when there is no reliable factual basis to suggest that the results of such an inquiry would yield a useful

¹⁶ See s.476(2)(a) of the Migration Act

¹⁷ CB 240

¹⁸ CB 240-241

¹⁹ *Australian Postal Corporation v D'Rozario* (2014) 222 FCR 303 at [24] per Besanko J, [77]-[78] per Jessup J, [118], [125] per Bromberg J

²⁰ *Minister for Immigration v SZMDS* (2010) 240 CLR 611 at [78] per Heydon J, [130]-[131] per Crennan and Bell JJ; *SZOOR v Minister for Immigration* (2012) 202 FCR 1 (FC) at [15] per Rares J, [85] per McKerracher J

²¹ *Minister for Immigration v SZIAI* (2009) 259 ALR 429 at [25]

result²². In oral submissions, Ms Rani's representative suggested that the Tribunal should have made inquiries of the Minister or his Department, but it is unclear to me how that could have assisted the review. There was no duty on the Tribunal to make further inquiries.

15. Ms Rani's submissions also argue with the Tribunal's factual conclusions that the document at CB 86 was of a test undertaken by a different person and had been altered by Ms Rani. These conclusions were open to the Tribunal for the reasons it gives. There is no error of law in the Tribunal making a wrong finding of fact²³.
16. Further, the Tribunal complied with the requirements of procedural fairness by informing Ms Rani of the information it had obtained pursuant to s.359AA. Ms Rani had submitted the delegate's decision as part of the application for review to the Tribunal, and so gave the information in the delegate's decision to the Tribunal within s.359A(4)(b)²⁴.
17. The second ground claims that the Tribunal committed a jurisdictional error in applying the test of reasonable suspicion in s.97 of the Migration Act.
18. The Tribunal's finding that the document at CB 86 was a "bogus document" required that it "reasonably suspect" that the document was not issued in respect of Ms Rani or was counterfeit or altered²⁵. The evidence before the Tribunal was sufficient to induce such a reasonable suspicion, being something a reasonable person may apprehend²⁶. Contrary to what appears to be suggested in Ms Rani's submissions, this does not require the evidence be such that the Tribunal's reasonable suspicion was of facts established on the balance of probabilities²⁷.
19. Ms Rani's submissions on this ground also appear to assert that she was unaware of the falsity of the document at CB 86. Leaving aside

²²*SZIAI* at [26]

²³*Waterford v Commonwealth* (1987) 163 CLR 54 at 77; *Australian Heritage Commission v Mount Isa Mines Ltd* (1997) 187 CLR 297 at 303; *Abebe v Commonwealth* (1999) 197 CLR 510 at [137]

²⁴*Minister for Immigration v Brar* (2012) 201 FCR 240 (FC) at [74]

²⁵ see s.97 of the Migration Act

²⁶*George v Rockett* (1990) 170 CLR 104 at 112-113

²⁷*George v Rockett* at 115-116 (although on the facts found by the Tribunal this standard would be satisfied also)

that this seems contrary to the Tribunal's findings at [28]²⁸, PIC 4020(1) does not require that an applicant know that a document submitted is false²⁹.

I certify that the preceding nineteen (19) paragraphs are a true copy of the reasons for judgment of Judge Driver

Associate:

Date: 3 March 2015

²⁸ CB 243

²⁹ *Trivedi v Minister for Immigration* (2014) 220 FCR 169 (FC) at [43], [49]